Date: 20071106

Docket: T-1020-07

Citation: 2007 FC 1074

Ottawa, Ontario, November 6, 2007

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA

Applicant

and

KEYVAN NOURHAGHIGHI

Respondent

REASONS FOR ORDER AND ORDER

O'KEEFE J.

[1] This is a motion by Keyvan Nourhaghighi (the respondent) for:

> a. An Order striking out the Applicant's Notice of Application filed June 4, 2007 ("Vexatious Notice of Application") and dismissing the application pursuant to Rules 3, 4 and the analogy of Rule 221(1)(a) (b) (c) (f), 221(2), 301(e) of the *Federal Court Rules, 2002* ("Rules").
>
> b. An Order providing that no further proceedings be instituted or continued against the Respondent, Honourable Major Keyvan

> Nourhaghighi (“Major”) by the Attorney General of Canada, and the Deputy Attorney General of Canada, Department of Justice, Ontario Regional Office, Roger Flaim, Karen Lovell, Amy Porteous, Sean O’Donnell, Douglas R. Neville, Sally Thomson, (“Vexatious Counsel”), in the Federal Court without leave of a judge of the Federal Court of Canada; where the Vexatious Counsel disobeyed the orders and process of this Honourable Federal Court of Canada, numerously;
>
> IN THE ALTERNATIVE, an Order under that the Court provides a precise definitions for the legal terms used in Section 40 of the *Federal Courts Act* (“s. 40”), where there is no Rule and definition to govern s. 40; that the order shall contain a clear reasons to Major’s Question that Why s. 40 is not in the breach of s. 7 of the *Canadian Charter of Rights and Freedoms* (“Charter”);
>
> c. His costs of this motion to be fixed in amount of $3000.00 to be paid by the Counsel, or by the Applicant to Major, forthwith, in any event of the cause;
>
> d. Such further and other relief as the Respondent may seeks and this Honourable Federal Court may be permitted.

[2] The notice of application sought to be struck out is the application of Her Majesty the Queen in Right of Canada for an order pursuant to subsection 40(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the Act) for “an order providing that no further proceedings be instituted or continued by the respondent, Keyvan Nourhaghighi in the Federal Court or the Federal Court of Appeal without leave of a judge of the Federal Court of Canada.”

[3] Both parties are in agreement that as of the date of this application or the hearing of this motion, the applicant has no matters filed before this Court.

[4] The applicant alleges that the respondent has commenced a number of files before the Court since June 1999.

[5] Mr. Justice Campbell of this Court denied the applicant's request for a similar order by decision dated June 2, 1999. That application referred to nine actions filed between May 20, 1995 and August 6, 1997 within which the statements of claim were struck. Mr. Justice Campbell also noted that the applicant referred to a further action filed on May 28, 1999 and two appeals that were before the Appeal Court.

[6] The respondent pointed out that he had been successful in some of the matters he put before the Court.

[7] The applicant stated in her oral argument before me:

> The Applicant today has taken the position that it is inappropriate of the Crown to use the expression "since June 1999". I won't go into that in any depth, but just make it clear that we are not alleging that there are open files now. We are alleging that between June 1999 and now there have been, I believe, three applications, two actions, 20-plus motions and several appeals. He is certainly correct that, as far as we are aware, there is nothing currently going on.

[8] Section 40 of the *Federal Courts Act* above, states:

40.(1) If the Federal Court of Appeal or the Federal Court is satisfied, on application, that a person has persistently instituted vexatious proceedings or has conducted a proceeding	40.(1) La Cour d'appel fédérale ou la Cour fédérale, selon le cas, peut, si elle est convaincue par suite d'une requête qu'une personne a de façon persistante introduit des instances

in a vexatious manner, it may order that no further proceedings be instituted by the person in that court or that a proceeding previously instituted by the person in that court not be continued, except by leave of that court.

vexatoires devant elle ou y a agi de façon vexatoire au cours d'une instance, lui interdire d'engager d'autres instances devant elle ou de continuer devant elle une instance déjà engagée, sauf avec son autorisation.

(2) An application under subsection (1) may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application and on any application made under subsection (3).

(2) La présentation de la requête visée au paragraphe (1) nécessite le consentement du procureur général du Canada, lequel a le droit d'être entendu à cette occasion de même que lors de toute contestation portant sur l'objet de la requête.

(3) A person against whom a court has made an order under subsection (1) may apply to the court for rescission of the order or for leave to institute or continue a proceeding.

(3) Toute personne visée par une ordonnance rendue aux termes du paragraphe (1) peut, par requête au tribunal saisi de l'affaire, demander soit la levée de l'interdiction qui la frappe, soit l'autorisation d'engager ou de continuer une instance devant le tribunal.

(4) If an application is made to a court under subsection (3) for leave to institute or continue a proceeding, the court may grant leave if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding.

(4) Sur présentation de la requête prévue au paragraphe (3), le tribunal saisi de l'affaire peut, s'il est convaincu que l'instance que l'on cherche à engager ou à continuer ne constitue pas un abus de procédure et est fondée sur des motifs valables, autoriser son introduction ou sa continuation.

(5) A decision of the court under subsection (4) is final and is not subject to appeal.

(5) La décision du tribunal rendue aux termes du paragraphe (4) est définitive et sans appel.

[9] The Federal Court of Appeal in *Canada* v. *Olympia Interiors Ltd.*, [2004] F.C.J. No. 868 stated at paragraph 6:

> The power conferred on the Court by subsection 40(1) of the Act is, of course, most extraordinary, so much so that it must be exercised sparingly and with the greatest of care. In a society such as ours, the subject is generally entitled to access the courts with a view of vindicating his or her rights. This concern was obviously in the mind of the legislators, seeing that some balance is built into section 40 by allowing proceedings to be instituted or combined with leave of the Court. . . .

[10] In the present motion, the Court is dealing with a motion to strike the application requesting an order pursuant to subsection 40(1) of the Act.

[11] In *David Bull Laboratories (Canada) Inc.* v. *Pharmacia Inc.*, [1995] 1 F.C. 588 at paragraph 15, Justice Strayer of the Federal Court of Appeal stated for the Court:

> For these reasons we are satisfied that the Trial Judge properly declined to make an order striking out, under Rule 419 or by means of the "gap" rule, as if this were an action. This is not to say that there is no jurisdiction in this Court either inherent or through Rule 5 by analogy to other rules, to dismiss in summary manner a notice of motion which is so clearly improper as to be bereft of any possibility of success. Such cases must be very exceptional and cannot include cases such as the present where there is simply a debatable issue as to the adequacy of the allegations in the notice of motion.

This Court believes the same reasoning applies to the applicant's application pursuant to section 40 of the Act.

[12] As such, I am of the view that the respondent's request for an order striking out the applicant's notice of application filed June 4, 2007 must succeed as the application is bereft of any possibility of success.

[13] I have reached this conclusion because:

1. The respondent had no matters before this Court when the applicant's application was filed nor at the date of the hearing of this motion.

2. According to the applicant's arguments before me, the respondent has in the past, filed three applications, two actions, 20-plus motions and several appeals.

3. According to the respondent, he was successful on some of the matters.

[14] If the application was to go forward, I see no basis upon which the judge could issue an order pursuant to subsection 40(1) of the Act. Accordingly, the application would be bereft of success.

[15] I am not prepared to grant the other relief requested by the respondent except for my order for costs as the other relief requested is not the proper subject matter for this particular motion.

[16] The respondent shall have his costs of this motion and such costs shall be assessed by an assessment officer.

ORDER

[17] **IT IS ORDERED that:**

1. The applicant's notice of application requesting an order pursuant to section 40 of the Act is struck out.

2. The respondent shall have his costs of the application; such costs shall be assessed by an assessment officer.

"John A. O'Keefe"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1020-07
STYLE OF CAUSE:	HER MAJESTY THE QUEEN IN RIGHT OF CANADA - and - KEYVAN NOURHAGHIGHI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 25, 2007
REASONS FOR ORDER AND ORDER OF:	O'KEEFE J.
DATED:	November 6, 2007

APPEARANCES:

May Porteous	FOR THE APPLICANT
Keyvan Nourhaghighi	SELF-REPRESENTED FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE APPLICANT
Keyvan Nourhaghighi Toronto, Ontario	SELF-REPRESENTED FOR THE RESPONDENT